

The Confederated Tribes of the Grand Ronde Community of Oregon

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March 11, 2011

Ms. Mary Milam
United States Department of the Interior
1849 C Street NW, MS 4141 - MIB
Washington, DC 20240

*via electronic submission to
consultation@doi.gov*

Re: Draft Tribal Consultation Policy Comments

Dear Ms. Milam:

The Confederated Tribes of the Grand Ronde Community of Oregon ("Grand Ronde") respectfully submits the following comments regarding the Department of the Interior's draft Tribal Consultation Policy in response to the Department's letter of January 14, 2011. Grand Ronde appreciates this opportunity, as well as prior opportunities, to comment on the Department's efforts to improve its policies on consultation and coordination with Indian tribes. Grand Ronde attended the consultation session on December 9, 2009, in Portland, Oregon, and subsequently provided written comments by letter dated January 15, 2010. Grand Ronde believes the draft Tribal Consultation Policy is a good step forward in addressing the need for meaningful consultation generally and our comments specifically, but that additional refinement is necessary as described below.

Preamble and Guiding Principles

The current language of the Preamble states that federal agencies meet their obligation to engage with tribes on a government-to-government basis through consultation, and that the Department satisfies its consultation obligation by adhering to the framework described in the draft policy. Grand Ronde has concerns with this language as the obligation to engage with tribes on a government-to-government basis is not necessarily met by consultation alone, and the obligation to consult is not necessarily met just by adhering to the framework described in the draft policy. As such, the language of the draft policy should be modified to indicate that obligations of the Department are *furthered* through consultation and adherence to the framework described in the draft policy.

In addition, language in the Preamble and in the Guiding Principles suggests that the Department only has the obligation to consult when directed by statute or administrative action or where statutory or administrative opportunities to consult with Indian tribes exist. It is not clear what this means and Grand Ronde is concerned that this language is inappropriately narrow.

Definitions

Grand Ronde encourages the Department to modify the definition of "Departmental Action with Tribal Implications" to include the catchall – "or other actions that may have a substantial direct

Umpqua Molalla Rogue River Kalapuya Chasta

effect on a Tribe.” This catchall is found in the definition of “Policies that have tribal implications” in Executive Order 13175 and is consistent with the intent of the Executive Order and President Obama’s Memorandum of November 5, 2009. Furthermore, Grand Ronde believes the definition should specify that actions affecting off-reservation resources or interests are included.


Accountability and Reporting

Grand Ronde applauds the Department for recognizing the need for accountability provisions and including them in the draft Tribal Consultation Policy. However, Grand Ronde feels that the provisions in the draft policy fall short of what is needed to ensure the Department is meeting its obligations and that tribes realize the true outcomes from the consultation process. The annual reporting requirement described in Section VI of the draft Tribal Consultation Policy should specify additional information for the reports including dates when notice of an action was provided and to which tribes, a list of the tribes that responded and a summary of the types of concerns raised, and a summary of how the Department responded to the concerns raised by the tribes. The reporting should also occur more frequently, such as quarterly. More frequent reporting would make the reporting requirement more manageable and because the reports would be available on the Department’s website, tribes would have more frequent and timelier information on the outcomes of the consultation process.

Grand Ronde also supports the requirement described in Section VIII.D.3 of the draft Tribal Consultation Policy for the Department to provide notice to affected tribes of final decisions on Department action. The draft policy requires that the notice include a short explanation of the final decision. Grand Ronde suggests that the notice also include a discussion of how the Department incorporated the tribe’s comments into the Department’s decision-making.

Thank you again for the opportunity to comment on the Department’s draft Tribal Consultation Policy. Meaningful consultation geared towards cooperative decision-making that acknowledges the interests of both the Department and the affected tribes is extremely important to Grand Ronde and we appreciate your efforts in this regard. Please contact me at (503) 879-2399 if you have any questions.

Very truly yours,



Reynold L. Leno
Vice Chair

cc: Tribal Council
Tribal Attorney
Executive Officer